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## NOTES AND SUGGESTIONS

### THE ALLEGED OXFORD COUNCIL OF 1213

AN interesting discussion in this and another review took place in the years 1905 and 1911<sup>1</sup> respectively, on the writ of July 21, 1213, alleged by Roger of Wendover to have been issued with a view to summoning a representative assembly to St. Alban's, with the primary object of assessing the losses sustained by the bishops in the recent quarrel with King John. There would appear to be equal if not greater mystery connected with another writ of the same year, likewise printed in the same well-known collections,<sup>2</sup> and made the basis of somewhat important inferences.

The writ is thus given by Dr. Stubbs:

Rex Vicecomiti Oxon. salutem. Praecipimus tibi quod omnes milites baillivae tuae, qui summoniti fuerunt esse apud Oxoniam ad nos a die Omnium Sanctorum in quindecim dies venire facias cum armis suis; corpora vero baronum sine armis similiter: et quatuor discretos homines de comitatu tuo illuc venire facias ad nos ad eundem terminum ad loquendum nobiscum de negotiis regni nostri. Teste me ipso apud Wytteñ. VII. die Novembris.

Eodem modo scribitur omnibus vicecomitibus.

We now know that, as has recently been pointed out by Miss Levett,<sup>3</sup> the late Bishop of Oxford, in transcribing the writ from the *Report on the Dignity of a Peer*, in which it was printed (though not for the first time) in 1829, accidentally gave *homines* for *milites* in the later part; and this is unfortunate, because Dr. Stubbs, in his commentary, drew from the *homines* rather important conclusions, which have been somewhat too confidently accepted by later writers.<sup>4</sup>

The Bishop comments thus:

It is the first writ in which the "four discreet men" of the county (*sic*) appear as representatives; the first instance of the summoning of the folkmoot to a general assembly by the representative machinery

<sup>1</sup> *English Historical Review*, XX. 289 (H. W. C. Davis); XXI. 297 (G. J. Turner); *American Historical Review*, XVII. 12 (A. B. White).

<sup>2</sup> Stubbs, *Select Charters* (fifth ed.), p. 287; Medley, *Original Illustrations of English Constitutional History*, p. 163.

<sup>3</sup> *Eng. Hist. Rev.*, XXI. 85.

<sup>4</sup> E. g., Gneist, *Verfassungsgeschichte* (trans. Ashworth), p. 270 n.; Maitland, *Constitutional History*, p. 68 (it is only fair to remember that this is a posthumous work); Anson, *Law and Custom* (third ed.), I. 46.

already used for judicial purposes. The four men and the reeve had from time immemorial represented the township in the shiremoot; now the four men and the sheriff represent the shiremoot in the national council.

But it is clear that there is no hint in the writ itself of any connection with the ancient township representation, still less with that vague and shadowy body the "folkmoor"—all that is based upon a mere slip in transliteration. Moreover, the writ, even as given by Dr. Stubbs, affords no authority for the suggestion that the sheriff was to accompany the chosen representatives in their alleged pilgrimage to a central assembly. The well-known words in which such a direction would be given: *et habeas ibi nomina militum et hoc breve*, are not to be found. But, at the risk of destroying a pious legend, which has, however, to the thoughtful reader, always presented great difficulties, it may perhaps be pointed out that the writ in question is open to a construction entirely different from that hitherto accepted.

It is only fair to say that the accepted legend did not originate with Dr. Stubbs. In the oldest modern print known to the writer, that of the Record Office edition of Rymer's *Foedera*,<sup>5</sup> the writ is indexed as "De Summonitione ad Parliamentum Oxon."; but, as the committee from whose report Dr. Stubbs quotes is careful to point out,<sup>6</sup> there is no authority for this rubric on the original roll, which merely gives the writ without title. Sir T. D. Hardy, however, in the Record Commission's edition of the Close Rolls,<sup>7</sup> published in 1833, instead of reprinting the writ itself, expands the title given by the editors of the *Foedera* into an elaborate summary of what he took to be the meaning of the writ, adding merely a reference to the *Foedera*—a proceeding against which, despite the official explanation,<sup>8</sup> it is surely permissible to protest, as both inconvenient and misleading.

To the writer, the crux of the interpretation appears to be in the final words, not of the writ, but of the enrollment. In later times, no doubt, the words, *eodem modo scribitur omnibus vicecomitibus*, would mean that similar writs, with the sole alteration of the address, had been sent to the sheriffs of all the other counties. But can we be sure that, at the beginning of the thirteenth century, the practice had been firmly settled? In other words, can we be quite sure

<sup>5</sup> *Chronological Index*, p. xxxv. (1816). The writ is there given as of November 13, which is not only wrong but impossible.

<sup>6</sup> I. 61.

<sup>7</sup> I. 165.

<sup>8</sup> Given by Miss Levett in note 4 to the first page of her article (*Eng. Hist. Rev.*, XXXI. 85).

that the writ of November 7, 1213, to the sheriff of Buckingham did not bid him assemble his knights at Buckingham, that to the sheriff of Bedford, at Bedford, and so on? Dr. Stubbs, with his usual candor, informs us that there is "no record" of the Council of Oxford having been actually held; and this statement, from a man of Bishop Stubbs's learning, is fairly strong evidence that no such record survives. And yet it seems somewhat unlikely that a Council, of the novelty assumed, should be passed over in silence by the chroniclers. Can it be because it not only did not meet, but because it was never intended to meet?

In addition to the significant fact that the alleged council at Oxford, if it ever took place in the representative form suggested by Dr. Stubbs, would have been an anticipation, by forty years, of the first representative central assembly of which we have actual records, there is a special difficulty which has been previously pointed out,<sup>9</sup> with regard to the date fixed for the alleged meeting. The writ, as given by Dr. Stubbs, allows only eight days for the selection and journey to Oxford of the "four discreet knights" of the county. Such a direction, in the circumstances of the time, would have been a farce, at any rate as regarded the remoter counties. Even assuming that nothing in the way of an election was contemplated, but that the sheriff was simply to pick his knights, there would be required the time to send the writ to, say, Norwich, and for the knights to journey from Norwich to Oxford. The allowance of time, eight days, would have been hopelessly inadequate.

But if the direction had been in each case to summon the four knights *to the shire town*, the writs to the other sheriffs would still, surely, have been *eodem modo* with the writ to the sheriff of Oxford; and the time allowed, though not excessive, would not have been unreasonable.

Nor would it have been without precedent in contemporary practice. The process of choosing four knights of the county to perform legal business dates at least from the Grand Assize of Henry II.; and it seems to have been extending in the early years of the thirteenth century. There is, for example, a writ of the very month and year of the Oxford writ,<sup>10</sup> addressed to the sheriff of Cumberland, bidding him send "four lawful knights" of his county to Carlisle, to witness a choice of attornies by two litigants; and it is probable that a further study of the rolls would reveal similar instances. Another

<sup>9</sup> *Eng. Hist. Rev.*, XXXI. 87.

<sup>10</sup> *Rot. Claus.*, I. 139.

writ of the same year,<sup>11</sup> on the assessment of damages due to the bishops, alluded to by Mr. Turner,<sup>12</sup> and said, apparently without justification, to be found on the Patent Rolls, directs the commissioners to attend at times and places to be fixed by the respective bishops. Is there any suggestion here of a central assembly?

The whole position is complicated by the fact that the writ of November 7, 1213, is obviously supplementary to an earlier writ which appears to have summoned *all* the knights of the shire; and this earlier writ, seemingly, does not survive. But it would appear to have been of a military, rather than a political character; and, regard being had to the circumstances of the time, it seems to be equally arguable that such a writ would be directed toward securing one central or many local gatherings. On the one hand, an army dispersed among thirty-seven different centres is not of much military value; on the other, John may well have hesitated, in view of his quarrel with the barons, to summon the whole feudal forces of the country to a single spot. Such a step might have placed an overwhelming force at the disposal of his opponents.

EDWARD JENKS.

#### THE LORDS OF THE COMMITTEE OF COUNCIL

IN 1896 Professor Wolfgang Michael published the first volume of his *Englische Geschichte im Achtzehnten Jahrhundert*, in which he described the structure and working of the cabinet for this period, an account which he afterwards elaborated in various special studies, the most important, perhaps, being "Die Entstehung der Kabinettsregierung in England", which appeared in 1913.<sup>1</sup> These writings are endowed with qualities well known in the contributions of their eminent author, and for the students of the cabinet they have the particular merit that portions of them are based on materials made known for the first time from the archives of Hanover, Vienna, and Berlin. Probably what relates to the history of the cabinet before 1700 is founded upon inadequate information, and further search in the English sources would have revealed data which apparently the author has not used; but I wish here to acknowledge the excellence of most of what relates to the period subsequent. With one of the conclusions, however, I do not agree, and this conclusion pertains to a matter of great importance in the history of cabinet development.

<sup>11</sup> *Foedera*, I. 114. The writ is, seemingly, on the Close Rolls (see *Rot. Claus.*, I. 164), not on the Patent Rolls, as stated by the *Foedera*.

<sup>12</sup> *Eng. Hist. Rev.*, XXI. 299.

<sup>1</sup> *Zeitschrift für Politik*, VI. 549-593.